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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 09-14485 (ALG)

Icon Realty Corp.,

Chapter 11

Debtor.

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**APPLICATION FOR AN ORDER AUTHORIZING THE RECEIVER TO
RETAIN KOSSOFF & UNGER AS SPECIAL LANDLORD-TENANT COUNSEL**

**TO THE HONORABLE ALLAN L. GROPPER,
BANKRUPTCY JUDGE:**

The application of Intervest National Bank (“Intervest”), by its attorneys Goldberg Weprin Finkel Goldstein LLP, respectfully alleges and shows this Court as follows:

1. On July 15, 2009, Icon Realty Corp. (the “Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor owns a mixed use residential and commercial building located at 170-174 Nagle Avenue, New York, New York (the “Property”).

2. At the time the Chapter 11 case was filed, a foreclosure proceeding had been commenced by Intervest which holds the first and second mortgages upon the Property.

3. By Order dated January 21, 2009, Gregory Soumas was appointed as

Receiver of the Property in the foreclosure proceeding pending in the Supreme Court, New York County (Index Number 115491/2008).

4. On September 2, 2009, this Court signed an Interim Order which allowed the Receiver to remain in possession custody and control of the Property, continue his retention of the managing agent for the Property and to continue all necessary proceedings with respect to non-payment of rent by residential tenants.

5. A second Order was signed by this Court on September 17, 2009 continuing the Receiver and authorizing the Receiver to pay various expenses incurred during the pendency of the Receivership.

6. Intervest and the Debtor have been working together to pursue a sale of the Property under a plan of reorganization to a third-party purchaser. In the interim, the Receiver remains in place to manage the Property.

7. In that regard, the Receiver has been represented by Kossoff & Unger in various landlord and tenant proceedings, both pre-petition and post-petition. Kossoff & Unger has requested that it receive the benefit of a formal retention order to continue the firm's retention of the Receiver during the pendency of the Chapter 11 case.

8. The undersigned, as counsel to Intervest, prepared a proposed retention order and after various modifications at the request of Kossoff & Unger and counsel for the Debtor (which has indicated that it has no objection to entry of the Order), the Order was presented to the U.S. Trustee for review and processing. Annexed hereto as Exhibit "A" is a copy of the proposed retention order, supporting application and

affidavit.

9. After delivering the retention order to the U.S. Trustee, Mr. Morrissey of the U.S. Trustee's Office requested that he be provided with authorities setting forth that the Receiver is entitled to retain counsel and that counsel is required to comply with the provisions governing the payment of professionals in bankruptcy cases.

10. On October 28, 2009, the undersigned delivered to counsel for the U.S. Trustee, a letter setting forth the legal authorities in support of the retention, including Judge Bernstein's decision, in re 245 Associates, LLC, 188 BR 743 (Bkcy SDNY, 1995). A copy of the October 28, 2009 correspondence is annexed hereto and made a part hereof as Exhibit "B", which references various decisions requiring a Receiver to retain counsel in a Chapter 11 case.

11. Thereafter, Mr. Morrissey indicated that notwithstanding the aforesaid authorities, the Office of the U.S. Trustee requested that the application be made on notice before the Court. The U.S. Trustee did state that it would not object to the nunc pro tunc retention of counsel by the Receiver.

12. Under the circumstances, Intervest hereby formally moves to permit and authorize the Receiver to retain counsel in accordance with the proposed retention order annexed hereto as Exhibit "A".

WHEREFORE, the Mortgagee requests that this Court enter the Order annexed as Exhibit A to this application together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 13, 2009

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